

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2200 OF 2017

- | | | |
|----|--------------------------|--------------|
| 1. | Anil Anant Thakur | .Petitioners |
| 2. | Sakshi Jitendra Kamtekar | |

Vs.

- | | | |
|----|--|--------------|
| 1. | The Additional Collector, Palghar | .Respondents |
| 2. | Milind Khanolkar | |
| 3. | The Tahsildar, Vasai, District – Palghar | |
| 4. | The Caste Scrutiny Committee | |
| 5. | The Secretary of Groop, Grampanchayat
Satpala, District – Palghar | |
| 6. | The Additional Commissioner | |
| 7. | The State of Maharashtra | |

Mr. Prashant Bhavake, Advocate, for the Petitioners

Mr. A. D'Souza, Advocate, for the Respondent No. 2

Mr. Y. D. Patil, AGP, for the Respondent Nos. 1, 3, 4, 6 & 7 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 05.10.2018

P.C.

. Heard learned counsel for the parties.

2. The aforesaid Petition was admitted on 11.07.2018 and interim relief was granted to the Petitioners in terms of prayer clause (c) of the Petition. Vide order dated 11.07.2018, parties were also granted liberty to apply for early hearing depending

upon the outcome of the Special Leave Petition which was pending before the Apex Court, wherein the challenge was to the decision of the full Bench of this Court. Since the Apex Court has dismissed the SLP, learned counsel for the Respondent No. 2 sought early hearing of the aforesaid Writ Petition. According to the learned counsel for the Respondent No. 2, the full Bench Judgment of this Court in *Anant H. Ulahalkar and anr. Vs. Chief Election Commissioner and ors.*, reported in **2017(1) Bom. C. R. 230**, is squarely applicable to the facts in the present case. Learned counsel also relied on the Judgment dated 02.09.2016 passed by this Court (Aurangabad Bench) (Coram : T. V. Nalawade, J.) in **W. P. No. 5686 of 2016** as well as a Division Bench Judgment of this Court (Coram : Naresh H. Patil & M. S. Karnik, JJ.) passed in **W. P. No. 10478 of 2014**. He submitted that admittedly, the Petitioners had not submitted the Caste Validity Certificate within the stipulated period i. e. within six months and as such, the Petitioners stood dis-qualified under Section 10(1)(a) of the Maharashtra Village Panchayats Act, 1959.

3. Learned counsel for the Petitioners does not dispute the fact, that the SLP challenging the full Bench Judgment of this Court, was dismissed by the Apex Court vide order dated 23.08.2018 and as such, the Judgment of this Court was confirmed. Learned counsel for the Petitioners, however, relied on the decision taken in the Cabinet meeting dated 18.09.2018, wherein, it was decided to grant six months extension to elected candidates to submit their Caste Validity Certificate. Learned counsel also relied on a copy of the Maharashtra Ordinance No. XX of 2018 dated 27.09.2018, 'further to amend The Mumbai Municipal Corporation Act, The Maharashtra Municipal Corporations Act and the Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965'.

4. Perused the papers. The Petitioners had contested the election of the Gram Panchayat, Satpala which was declared on 09.11.2015. The Petitioner No. 1 had contested the said election from the reserved category (OBC) and the Petitioner No. 2 had contested the election from the reserved category (OBC women).

Results of the said election i. e. of the Grampanchayat were declared on 09.11.2015 and both the Petitioners were declared to be elected as members of the Grampanchayat under Section 10(1) (a) of the Maharashtra Village Panchayats Act. As per the provisions of the Act, the Petitioners were to submit their Caste Validity Certificates within six months from the date of election. It is not in dispute that the said Caste Validity Certificates were not submitted by the Petitioners within the stipulated period i. e. on or before 09.05.2016. It appears that the Petitioner No. 1 submitted his Caste Validity Certificate on 29.07.2016 and the Petitioner No. 2 submitted her Caste Validity Certificate on 26.08.2016. As the Caste Validity Certificates were not submitted within the stipulated period, the Respondent No. 2 herein filed a complaint before the Additional Collector, Palghar and sought dis-qualification of the Petitioners under Section 10(1)(a) of the Maharashtra Village Panchayats Act., as the Petitioners had failed to submit the Caste Validity Certificates within the mandatory period of six months. The learned Additional Collector was pleased to allow the Application of the Respondent No. 2 and as such, disqualified the Petitioners under Section 10(1)(a) of the

Maharashtra Village Panchayats Act. The said order dated 25.11.2016 was confirmed by the learned Additional Commissioner vide order dated 31.12.2016. Being aggrieved by the said orders, the Petitioners challenged the same, by the aforesaid Writ Petition. It is pertinent to note that when the aforesaid Petition came up for admission before this Court, learned counsel for the Petitioners informed that several SLPs were filed before the Apex Court and that the Apex Court was dealing with the said issue i. e. issue of disqualification under Section 10(1)(a) for non-submitting the Caste Validity Certificate within six months. It was also submitted that the Judgment in the case of *Anant H. Ulahalkar (Supra)* was also challenged before the Apex Court and that several SLPs were pending, on the said issue. It was also informed that the Apex Court had issued notices to the Respondents in the SLPs and had granted stay to the order dated 09.12.2016 passed by this Court in W. P. No. 10478 of 2014 i. e. the full Bench decision. Having regard to the same, this Court admitted the aforesaid Petition and granted interim relief to the Petitioners, on 11.07.2018. Liberty was also granted to the Petitioners to apply for early hearing, depending upon the

outcome of the Special Leave Petition, which was pending before the Apex Court. In *Anant H. Ulahalkar's case (Supra)*, in para 100, the Full Bench has observed as under :-

“100. In the result, we hold that the time limit of six months prescribed in the two provisos to section 9-A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory.

Further, in terms of second proviso to section 9-A if a person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.

Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.

The question raised, stand answered accordingly.”

The Apex Court vide order dated 23.08.2018 was pleased to confirm the said Judgment, in *Anant H. Ulahalkar's case*. The Apex Court observed that the High Court was justified in coming

to the conclusion on the basis of the reasoning and as such, confirmed the decision of the full Bench and consequently, dismissed the SLP. It is also pertinent to note that this Court in *W. P. No. 5686 of 2016 (Shankar s/o Raghunath Devre (Patil) Vs. The State of Maharashtra & ors.)* had held that as per Section 10(1)(a) of the Maharashtra Village Panchayats Act, the Caste Validity Certificate is required to be produced within six months from the date on which the candidate is declared elected. The said order dated 02.09.2016 passed in W. P. No. 5686 of 2016 was also confirmed by the Apex Court, in the batch of SLP's, wherein the same issue was raised.

5. Considering the aforesaid, it is clear that a person is liable to be dis-qualified under Section 10(1)(a) of the Maharashtra Village Panchayats Act, if he or she fails to produce the Caste Validity Certificate within the period stipulated under Section 10(1)(a) of the Maharashtra Village Panchayats Act. Although, the learned counsel for the Petitioners relied on the Minutes of the Cabinet meeting as well as the Ordinance, it is pertinent to note, that as of today, there is no ordinance /

amendment, by which the six months period is sought to be extended by one year.

6. Having regard to what is stated hereinabove, the Petitioners are not entitled to any further protection. Accordingly, the Petition is dismissed and the orders passed by the Authorities disqualifying the Petitioners stand confirmed. Rule is discharged.

7. At this stage, Mr. Bhavake, learned counsel for the Petitioners seeks continuation of the interim relief. Request is rejected.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)